

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting prospecting permit application CA 16206.

Vacated and remanded.

1. Mineral Lands: Prospecting Permits

If all the requirements for issuance of a prospecting permit, including those requirements found at 43 CFR Subpart 3568 are met, it is proper for BLM to issue a prospecting permit for lands within the Whiskeytown-Shasta-Trinity National Recreation Area.

APPEARANCES: Richard W. Harris, Esq., Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On August 9, 1984, Nevcan Exploration, Inc., filed a "Prospecting Application and Permit" with the California State Office, Bureau of Land Management (BLM), for 960 acres in the Whiskeytown-Shasta-Trinity National Recreation Area (W-S-T Recreation Area). Subsequently, Nevcan received a BLM decision dated December 3, 1984, in which the prospecting permit was held for rejection, subject to appellant's right to perfect its application.

The BLM decision reads as follows:

The disposal of leasable minerals from the lands under application is governed by the regulations in 43 CFR 3568 \* \* \*. The cited regulation requires an application for a lease rather than a permit. 1/

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1/ The BLM decision further states:

"Although no specific form is used to apply for a lease the application, as filed, may be accepted as a lease application if its deficiencies are corrected by furnishing the following as required by 43 CFR 3568.3-1:

2. Compliance with 43 CFR 3502.4-1 \* \* \* by providing the names of the officers authorized to act on behalf of the corporation and the ". . . name, addresses, citizenship and acreage holdings of any stockholders owning or controlling 10% or more of the corporate stock . . .".

In addition, the lands applied for were described as follows:

T. 33 N., R. 2 W., MD Mer.  
 Sec. 4, N 1/2, SE 1/4, N 1/2 SW 1/4, except for that  
 owned by Elizabeth Cook Bertie,  
 et al;  
 Sec. 5, NE 1/4.

T. 34 N., R. 2 W., MD Mer.  
 Sec. 32, SE 1/4;  
 Sec. 33, SW 1/4, except for that owned  
 by Adolphsen Brushett.

The description of the lands under application is insufficient in that the excepted lands are unidentifiable and are not precise descriptions of land as shown on the records of this office. Copies of official plats are enclosed so the applicant may re-describe the lands desired, keeping in mind that a lease may issue for a maximum of 640 acres.

In its statement of reasons for appeal, appellant contends that Federal regulations clearly provide for issuance of a prospecting permit within the W-S-T Recreation Area, it is impossible for appellant to furnish the information required by BLM, and a prospecting permit should issue for the entire 960-acre tract sought in the application.

[1] The land included in Nevcan's application for a hardrock prospecting permit is within the W-S-T Recreation Area, an area under the surface management jurisdiction of the Department of Agriculture. As noted in the BLM decision, disposal of leasable minerals from the lands in the W-S-T Recreation Area is governed by 43 CFR Subpart 3568. Paragraph 3568.0-3 provides that section 6 of the Act of November 8, 1965 (P.L. 89-336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the

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fn. 1 (continued)

"1. The applicant must state whether the mineral applied for can be developed in paying quantities, stating the reasons therefore, and must furnish such facts as are available to him respecting the known occurrence of the mineral, the character of such occurrence and its probable value as evidencing the existence of a workable deposit of such mineral. In addition, the applicant may wish to specify what it considers to be an appropriate leasing unit of 640 acres or less pursuant to 43 CFR 3568.4-2."

nonleasable minerals from lands, or interests in lands, under the jurisdiction of the Secretary of Agriculture within the W-S-T Recreation Area in accordance with the provisions of section 3 of the Act of September 1, 1949 (64 Stat. 683; 30 U.S.C. § 192(c) (1982)), if he finds such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

The cited statute, 30 U.S.C. § 192(c) (1982), authorizes the Secretary of the Interior to issue leases or permits for the exploration, development, and utilization of the mineral deposits in those lands added to the W-S-T Recreation Area under general rules and regulations to be prescribed by him. The regulations governing issuance of leases and permits for solid minerals other than coal and oil shale are found at 43 CFR Subpart 3500, and 43 CFR 3500.1-1 expressly provides that "All deposits of leasable and hardrock minerals found in public domain lands and acquired lands that are available for leasing are subject to disposition under this part." Further, 43 CFR 3500.0-3(b)(2)(ii) specifically provides that lands acquired for inclusion in the W-S-T Recreation Area are to be leased in accordance with that subpart. See also 43 CFR 3501.4-1. 43 CFR Subpart 3510 provides for the issuance of prospecting permits. Therefore, the regulations promulgated by the Secretary of the Interior provide for the issuance of a prospecting permit for lands within the W-S-T Recreation Area. Those regulations found at 43 CFR Subpart 3568 impose additional requirements for issuance of permits or leases within the W-S-T Recreation Area and are not intended to bar the issuance of a prospecting permit. Cf. Elton Elliott, 82 IBLA 179 (1984). For example, in addition to all other requirements, a permit may be issued only if the Secretary of Agriculture consents to its issuance. 43 CFR 3568.1-1.

As previously noted, the regulations governing prospecting permits are found in 43 CFR Part 3510. The regulation governing acreage limitations for hardrock minerals is found at 43 CFR 3511.1-3(c). That regulation requires compliance with 43 CFR 3501.2-5(b)(2)(ii) which provides that a prospecting permit may not include more than 2,560 acres. Nevcan's application was for 960 acres which was within the acreage limitation, even though it might be deemed in excess of that permitted in a lease under 43 CFR 3568.4-2. 2/

It could be argued that the appeal should be dismissed because the BLM decision appealed from is interlocutory in nature. See Fortune Oil Co., 71 IBLA 153, 90 I.D. 84 (1983). However, we do not find it to be the case in this appeal because the portion of the decision holding the prospecting permit to be inapplicable to the W-S-T Recreation Area is not affected by

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2/ We note that Nevcan's application specifies 960 acres as the acreage covered by the application. However, the acreage of the land described by Nevcan in the legal description of land requested in the application totals 1,040 acres. The 80-acre discrepancy, therefore, is presumably accounted for by the two exclusionary phrases "except for that owned by Elizabeth Cook Bertie, et al." and "except for that owned by Adolphsen Brushett." This, however, is not a proper legal description.

any subsequent submittal or a failure to submit evidence called for. In fact, certain of the information called for is clearly not applicable to issuance of a prospecting permit. We therefore deem it appropriate to vacate the decision and remand this case to BLM for further action.

If, on review, BLM again deems it necessary to seek additional information, it should issue a decision requesting such information. Such request should, however, be directed to information requisite to issuance of a prospecting permit, not a lease.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case is remanded for further action in conformance with this decision.

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R. W. Mullen  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

